

addition, most hotels or motels provide food for their guests and many sell alcoholic beverages. These establishments also may engage in some minor revenue producing activities; such as, the operation of valet services offering cleaning and laundering service for the garments of their guests, news stands, hobby shops, the renting out of their public rooms for meetings, lectures, dances, trade exhibits and weddings. The exception provided for "hotels" and "motels" in section 13(b)(8) will not be defeated simply because a "hotel" or a "motel" engages in all or some of these activities, if it is primarily engaged in providing lodging facilities, food and drink to the public.

MOTION PICTURE THEATERS

§ 779.384 May qualify as exempt establishments.

Section 13(a)(9) of the Act as amended in 1966 exempts from the minimum wage and overtime pay requirements "any employee employed by an establishment which is a motion picture theater." This exemption will be applicable irrespective of the annual dollar volume of sales of such establishment or of the enterprise of which it is a part. A motion picture theater may also qualify as an exempt retail or service establishment under section 13(a)(2) of the Act if the establishment meets all requirements of the exemption, discussed above in §§ 779.337 to 779.341. The term "motion picture theater" as used in section 13(a)(9) means a commercially operated theater primarily engaged in the exhibition of motion pictures with or without vaudeville presentations. It includes "drive-in motion picture theaters" commonly known as "open air" or "drive-in" theaters, but does not include such incidental exhibition of motion pictures as those offered to passengers on aircraft. "Legitimate theaters" primarily engaged in exhibiting stage productions are not "motion picture theaters."

SEASONAL AMUSEMENT OR
RECREATIONAL ESTABLISHMENTS

§ 779.385 May qualify as exempt establishments.

An amusement or recreational establishment operating on a seasonal basis

may qualify as an exempt establishment under section 13(a)(3) of the Act, added by the 1966 amendments, even if it does not meet all the requirements of the 13(a)(2) exemption. Section 13(a)(3) exempts from the minimum wage and overtime pay requirements of the Act "any employee employed by an establishment which is an amusement or recreational establishment, if (a) it does not operate for more than seven months in any calendar year or (b) during the preceding calendar year, its average receipts for any 6 months of the year were not more than 33⅓ percentum of its average receipts for the other 6 months of such year". "Amusement or recreational establishments" as used in section 13(a)(3) are establishments frequented by the public for its amusement or recreation and which are open for 7 months or less a year or which meet the seasonal receipts test provided in clause (B) of the exemption. Typical examples of such are the concessionaires at amusement parks and beaches. (S. Rept. 145, 87th Cong., first session, p. 28; H. Rept. 75, 87th Cong., 1st Sess., p. 10.)

RESTAURANTS AND ESTABLISHMENTS
PROVIDING FOOD AND BEVERAGE
SERVICE

§ 779.386 Restaurants may qualify as exempt 13(a)(2) establishments.

(a) A restaurant may qualify as an exempt retail or service establishment under section 13(a)(2) of the Act. However, the establishment must meet all of the requirements of section 13(a)(2) (see § 779.337). It should be noted that a separate exemption from the overtime pay provisions of the Act only is provided in section 13(b)(18) for certain food service employees employed by establishments other than restaurants if the establishment meets the definition of a retail or service establishment as defined in the last sentence of section 13(a)(2). Privately owned and operated restaurants conducted as separate and independent business establishments in industrial plants, office buildings, government installations, hospitals, or colleges, such as were involved in *McComb v. Factory Stores*, 81 F. Supp. 403 (N.D. Ohio) continue to be exempt under section 13(a)(2) where the tests of